

SERVICE DATE – JANUARY 11, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. ISM 35008

PETITION FOR SUSPENSION AND INVESTIGATION
NMFC 100-AP SUPPLEMENT 2

Digest:¹ This decision denies a request to investigate amendments to the Uniform Straight Bill of Lading set forth in the National Motor Freight Classification. Because the amendments were not adopted under an approved collective rate-setting agreement, they are not subject to the reasonableness requirements of the statute. Thus, there is no basis for an investigation.

Decided: January 10, 2017

By petition filed on July 29, 2016, the Transportation and Logistics Council, Inc. (TLC) asked the Board to suspend and investigate the proposal of the National Motor Freight Traffic Association, Inc. (NMFTA) to revise the Uniform Straight Bill of Lading. In a decision served on August 12, 2016, the Board denied TLC's request to suspend or enjoin the effective date of NMFTA's revisions, but deferred ruling on TLC's request to investigate.

This decision denies TLC's request. As discussed below, the Board terminated its approval of motor carrier rate bureau agreements nearly 10 years ago, and as such, there is no basis for an investigation. Further Board involvement is not appropriate in this case.

BACKGROUND

In its petition to suspend and investigate, TLC contends that NMFTA's proposed revisions to the Uniform Straight Bill of Lading,² which became effective August 13, 2016, are unreasonable because the changes "were made without notice to the public" and "shippers or other members of the transportation community [were not] given any opportunity to comment or protest the changes." (TLC Pet. 4.) TLC further argues that the revisions would harm shippers by changing the provisions governing carrier liability for loss, damage, or delay, and the time

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Specifically, NMFTA proposed Supplement 2 to NMFC 100-AP, which revised the Uniform Straight Bill of Lading as set forth in the National Motor Freight Classification (NMFC), its terms and conditions, and the rules in Item 360-B.

limits for filing claims, to terms less favorable to shippers. TLC, therefore, requested that the Board enjoin NMFTA's revisions by exercising its power under former 49 U.S.C. § 721(b)(4)³ and that the Board suspend and investigate NMFTA's revisions pursuant to the "rate bureau" provisions of 49 U.S.C. § 13703(a)(5)(A).⁴

NMFTA filed a reply opposing TLC's petition. In its reply, NMFTA argues that, because there was no approved collective rate-setting agreement that placed the subject matter of the petition under the Board's regulatory authority, the Board cannot grant TLC the relief it has requested. NMFTA also argues that its changes to the Uniform Straight Bill of Lading are consistent with the law.

In its August 12, 2016 decision, the Board denied TLC's request to suspend or enjoin the effective date of NMFTA's amendments, deferred ruling on TLC's request to investigate, and directed the parties to file supplemental pleadings addressing the Board's authority to investigate. The Board also asked parties to address the Board's prior decision in Motor Carrier Bureaus—Periodic Review Proceeding (Motor Carrier Bureaus), EP 656 (STB served May 7, 2007), in which the Board terminated its approval of all remaining motor carrier rate bureau agreements to help ensure a competitive motor carrier industry. Id. at 5, 16, 27.

In its supplemental filings,⁵ TLC argues that the Board has authority under § 13703, § 14701, and § 1321 to investigate NMFTA's changes to the Uniform Straight Bill of Lading. TLC asserts that, under § 13703, the Board has authority to investigate "any tariff provision that is collectively made by a group of carriers" and, because the Uniform Straight Bill of Lading is such a collectively made tariff, the Board has to investigate in this case. (TLC Supp. Comment 1, Sept. 12, 2016.) TLC also asserts that the Board's decision in Motor Carrier Bureaus does not foreclose the Board from taking action in this instance because that decision applies only to agreements submitted to the Board for approval (i.e., approved agreements), whereas § 13703(a)(5)(A) is not limited to approved agreements, but rather, grants the Board authority to "suspend and investigate the reasonableness of any rate, rule, classification, or rate adjustment of general application made pursuant to an agreement under this section." (TLC Supp. Comment 2, Sept. 12, 2016 (emphasis added).) TLC then argues that, because NMFTA's

³ Section 721 of title 49 is now codified at 49 U.S.C. § 1321.

⁴ NASSTRAC, Inc. (NASSTRAC) filed a reply in support of TLC's petition. Odw Lts, Transportation Intermediaries Association, Marine and Insurance Claims Association, Briggs & Stratton Corporation, Argus Logistics, and TPS Logistics filed comments in support of TLC's petition. NASSTRAC and NITL also jointly filed supplemental comments and a supplemental reply, arguing that the Board has authority to address the issues raised in the proceeding.

⁵ TLC filed supplemental comments on September 12, 2016, and a supplemental reply on October 3, 2016.

changes to the Uniform Straight Bill of Lading are unreasonable under § 13701(a)(1)(C), they constitute “a violation within the purview” of the Board’s more general authority to investigate pursuant to § 14701. (Id.) Finally, TLC states that the Board also has authority to investigate pursuant to 49 U.S.C. § 1321 because that provision applies to all carriers under 49 U.S.C. Subtitle IV.

NMFTA responds⁶ that “interpretation and enforcement of the terms and conditions of bills of lading are exclusively vested in the courts” and that the Board has acknowledged the jurisdiction of the courts over such matters. (NMFTA Supp. Comment 1, 4, Sept. 12, 2016.) NMFTA also argues that because § 13703 applies only to agreements approved by the Board, the Uniform Straight Bill of Lading—which was not adopted under such an approved agreement—is not subject to § 13703. NMFTA concludes that § 14701 is inapplicable to this case primarily because the Board’s authority to investigate under that section is for the purpose of compelling compliance with the Interstate Commerce Act and, because the challenged bill of lading revisions do not violate that law, § 14701 “has no application.” (NMFTA Supp. Comment 5, Sept. 12, 2016.)

PRELIMINARY MATTERS

NMFTA opposes the submission of third-party pleadings in this case, arguing that this is not an “open” proceeding. (See NMFTA Supp. Reply, Oct. 3, 2016.) Additionally, NITL filed a petition to intervene in this proceeding on September 12, 2016. In the interests of having a complete record, the Board will accept the third-party submissions in this case and will grant NITL’s petition to intervene.

DISCUSSION AND CONCLUSIONS

The Board will deny TLC’s petition seeking an investigation of NMFTA’s amendments to the Uniform Straight Bill of Lading. As explained below, the agency may not regulate these sorts of motor carrier rates or practices unless they are established under approved rate bureau agreements. Because the revisions here were not adopted under an approved collective rate-setting agreement, they are not subject to the requirements of § 13701 and therefore are not subject to Board review under § 13703(a)(5)(A). Thus, there is no basis for an investigation under § 14701 or § 1321.⁷

⁶ NMFTA filed supplemental comments on September 12, 2016, and a supplemental reply on October 3, 2016.

⁷ Because this decision finds no basis for an investigation, the Board will not address parties’ arguments as to the substance of the amendments to the Uniform Straight Bill of Lading or the application of other general statutory provisions that do not confer investigatory authority

A. Authority Under § 13703 and Motor Carrier Bureaus

TLC argues that the Board should investigate here because § 13703(a)(5)(A) authorizes the Board to “suspend and investigate the reasonableness of any rate, rule, classification, or rate adjustment of general application made pursuant to an agreement under this section.” TLC recognizes that the motor carrier rate bureau agreement under which the challenged provision was adopted was not approved by the agency. But its position is that § 13703(a)(5)(A) refers to rate bureau activities generally, not just “approved” rate bureau activities. It argues that unlike § 13703(a)(5)(B)—which provides for investigations of activities under “agreement[s] approved under this section”—§ 13703(a)(5)(A) instead refers to “agreement[s] under this section,” and is not by its terms limited to “approved” rate bureau activities.

There is no legislative history for the enacting law explaining the reason for the omission of the term “approved” in § 13703(a)(5)(A). But taken in context, it is clear that Congress intended that the Board intervene only as to motor carrier activities performed under approved agreements.

In the ICC Termination Act of 1995, in adopting 49 U.S.C. § 13701, Congress “virtually eliminate[d] existing ICC motor carrier rate regulation.” H.R. Rep. No. 104-422, at 205 (1995). Congress’ intent is borne out by the fact that § 13701(a) limits the circumstances under which rates, classifications, rules, or practices could be reviewed for reasonableness:

A rate, classification, rule, or practice as related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving (A) a movement of household goods, (B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or (C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703, must be reasonable.

49 U.S.C. § 13701(a) (emphasis added).

NMFTA’s amendments do not involve carriers of household goods or a water carrier in noncontiguous domestic trade, meaning that the only potentially applicable provision under which they could be challenged is § 13701(a)(1)(C), which provides that agreements between motor carriers approved by the Board (under § 13703) must have rates, classifications, rules, or practices that are reasonable. However, the Board terminated its existing approval of all remaining motor carrier rate bureau agreements in 2007 to help ensure a competitive motor carrier industry. Motor Carrier Bureaus, EP 656, slip op. at 5, 16, 27. Accordingly, there are no longer any Board-approved agreements subject to review under § 13701(a)(1)(C). Under those

to the Board. (See, e.g., NASSTRAC Supp. Reply 2-4, Oct. 3, 2016; TLC Supp. Comment 4, Sept. 12, 2016.)

circumstances, TLC's reading of § 13703(a)(5)(A) as authorizing a Board investigation of activities not conducted under approved agreements must fail. Even if the Board were to investigate, as TLC urges, the reasonableness requirement of § 13701(a) would not apply because the NMFTA agreement was not Board-approved. Accordingly, TLC's reading would give the agency authority to investigate even though the agency could not find the revisions unreasonable.

TLC's reading also runs counter to the agency's purposes in revoking its approval of all motor carrier rate bureau agreements nearly a decade ago in Motor Carrier Bureaus. The statutory provision that became § 13703 was enacted in 1948 to protect from antitrust prosecution the activities of collective rate-setting bureaus operating under agreements approved by the agency. See EC-MAC Motor Carriers Serv. Assoc., Inc., 3 S.T.B. 926, 927 (1998). In 2007, in revoking all approvals of collective rate-setting agreements, the Board concluded that continued antitrust immunity and continued economic regulation "in this deregulated robust competitive market" were no longer appropriate. Motor Carrier Bureaus, EP 656, slip op. at 11. Rather, the Board's vision was that shippers and carriers would negotiate the terms of their transactions in the marketplace, and that the lawfulness of any remaining rate bureau activities would be addressed under the antitrust laws administered by the Department of Justice. See id. at 11-12, 22, 24-25. Thus, TLC's argument that the Board should review motor carrier collective rate practices is inconsistent with Motor Carrier Bureaus.

Accordingly, the Board finds that NMFTA's revisions to the Uniform Straight Bill of Lading are not subject to the reasonableness standard of § 13701 or the Board's investigation authority under § 13703(a)(5)(A).

B. Authority Under §§ 14701 and 1321

TLC argues that, because NMFTA's changes are unreasonable under § 13701(a)(1)(C), the Board should investigate under its general authority to investigate pursuant to §§ 14701 or, alternatively, the Board should use its authority to investigate pursuant to § 1321 because that provision applies to all carriers under 49 U.S.C. Subtitle IV. But because the Board finds that NMFTA's revisions are not subject to the reasonableness standard of § 13701, there is no basis for initiating an investigation under §§ 14701 or 1321.

It is ordered:

1. The Board grants NITL's petition to intervene. The Board accepts the third-party pleadings described above into the record.
2. The Board denies TLC's request to investigate NMFTA's revisions to the Uniform Straight Bill of Lading as described above.

3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.